

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1819 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 2309 of 2013

- =====
1. Surendra Prasad Ojha, Son of Sri Yadunath Ojha, Resident of Village & P.O.- Nimez, P. S.- Brahmpur, District- Buxar.
 2. Kundan Kumar, Son of Late Tarkeshwar Ojha, Resident of Village + P.O.- Nimez, P.S.- Brahmpur, District- Buxar.

.... Appellant/s

Versus

1. The State of Bihar through Principal Secretary, HRD Department, Government of Bihar, Patna.
2. The Special Director (Secondary Education), Department of Human Resources, Government of Bihar, Patna.
3. The District Magistrate, Buxar.
4. The District Education Officer, Buxar.
5. The Block Education Extension Officer, Barahmpur, Buxar.
6. The Chairman, Bihar Sanskrit Shiksha Board, Bihar, Patna.
7. The Secretary, Bihar Sanskrit Shiksha Board, Bihar, Patna.
8. Sanjay Kumar Madhukar, Son of D.N. Tripathi, Resident of Village- Ghurhupur, P.O.- Hathilpur, P.S.- Barahampur, District- Buxar.
9. Jitendra Trivedi, Son of Late Bishwanath Trivedi, Resident of Village- Ghurhupur, P.O.- Hathilpur, P.S.- Barahampur, District- Buxar.
10. Sipahi Prasad, Son of Late Jagdeo Prasad, Resident of Village-Ghurhupur, P.O.- Hathilpur, P.S.- Barahampur, District- Buxar.
11. Sri Gaurishankar Jha, Son of not known to the petitioner, presently posted as Law Officer, Bihar Sanskrit Shiksha Board, having office at Govindayan Bhawan, Boring Canal Road, (near Rajapur Pul) at Patna.
12. The Governing Body of Ram Briksha Prathmik Sah Madhya Sanskrit Vidyalaya, Ghurhupur through its Secretary Tarkeshwar Tiwari at Village and Post- Arak, P.S.- Krishnabrahm, District- Buxar.
13. Saroj Kumar Singh, Son of Sri Balram Singh, Resident of Belhar, Post Office- Mahuamama, Police Station- Madanpur, District- Aurangabad.

.... Respondent/s

=====

Appearance :

For the Appellants : Mr. Tej Bahadur Singh, Sr. Advocate with
Mr. Suresh Kumar Ishwar, Advocate

For the State : Mr. Sushant Praveen, AC to SC 27

For the Sanskrit Shiksha Board : Mr. S.S. Sundaram, Advocate

For the Respondents No. 8 to 10: Mr. J. P. Singh, Sr. Advocate with
Mr. Durganand Jha, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 12-07-2016

The present Letters Patent Appeal is directed against an order passed by the learned Single Bench of this Court on 9th April, 2014 arising out of C.W.J.C. No. 2309 of 2013.

The learned Single Bench, by the impugned order, has decided three writ petitions pertaining to the appointments in the Ram Briksha Sah Madhya Sanskrit Vidalaya, Gurhupur, District-Buxar. The said school is a recognized private Sanskrit School and is part of 429 Sanskrit Schools, which were earlier taken over by the State Government on 18.12.1989, but later reverted to remain as a recognized private school on expiry of an Ordinance with effect from 01.05.1992.

Admittedly, the power of appointment of teaching and non-teaching employees in the recognized Sanskrit Schools is vested in the Managing Committee constituted by the Bihar Sanskrit Shiksha Board in exercise of its power conferred under the Bihar Sanskrit Shiksha Board Act, 1981 (hereinafter referred to as the 'Act'). The learned Single Bench has examined the nature of appointments and returned a finding that the appointments made are in contravention of the procedure laid down under the Act, but allowed to continue the appellants as member of the teaching faculty till such time, duly constituted Managing Committee makes appointment after compliance of the statutory provisions. However, since the appointment of the appellants were found to be illegal, a direction

was issued that they will be entitled for payment of salary only with effect from the fresh date of approval of service by the Board and for the interregnum period, they will be only entitled to count their past service if the Board ultimately grants them approval of service.

Learned counsel for the appellants submits that the appellants are entitled to salary for the period they actually discharge their duties as taking work without payment would be wholly arbitrary and illegal. The appellants are entitled to fair remuneration in lieu of the work done. In fact, this Court passed an interim order on 6th May, 2016 to the effect that the appellants shall be entitled to payment of salary for the period they work for the Institution.

Learned counsel for the Respondents no. 8 to 10 states that none of the appellants are reporting for duty, therefore, they cannot be paid salary as was ordered by this Court on 6th May, 2016.

We have heard learned counsel for the parties and find that the condition imposed by the learned Single Bench that the appellants will be entitled for payment of their salary, only with effect from the fresh date of approval of service by the Board, is not fair and reasonable as no person can be compelled to work without payment of salary. However, there can be a condition that the appellants would get salary when they actually report for work and discharge their teaching obligations.

Therefore, the present appeal is partly allowed and the

condition of payment of salary from the date of approval of service by the Board as contained in para-30 of the order is set aside. It is directed that the appellants will be paid their salary as was being paid to them earlier till the date of approval of services by the Board provided they report for duty and discharge their obligations to the satisfaction of the management of the school.

We direct that the Managing Committee shall take expeditious steps for filling up the post of Members of the teaching faculty of the school within six months on regular basis after complying with the procedure for appointment. The Board, under the Bihar Sanskrit Shiksha Board Act, 1981, shall consider the grant of approval of the candidate selected in such selection process expeditiously preferably within a period of two months thereafter.

The appeal stands disposed off in the aforementioned terms.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar/Anjani

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A